

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-106-00

GAThorpe

date: February 15, 2000

to: Group Manager E:1102
ATTN: [REDACTED]

from: District Counsel, Connecticut-Rhode Island District, E. Hartford

subject: [REDACTED]

DISCLOSURE STATEMENT

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We are responding to your oral request for advice concerning the following issues: (1) whether the failure to file penalty under I.R.C. § 6651(a)(1) and the negligence penalty under I.R.C. § 6662 may be asserted if you disallow deductions and credits, under the authority of I.R.C. § 882(c) and Treas. Reg. § 1.882-4, relating to [REDACTED], a foreign corporation owned by the taxpayer; and (2) whether the authority to waive the timely filing requirement has been delegated below the District Director's level.

Based on Field Service Advice received from our National Office, we have previously advised you that the disallowance provision of § 882(c) and Treas. Reg. § 1.881-4 applies in this case since [REDACTED] failed to timely file its Forms 1120F for the years under examination. We also advised you that based on the facts presented, we do not believe that the taxpayer has established "good cause" for failing to timely file the returns in question, although this is a decision that you are in the best position to make. You recently indicated that you intend to disallow the deductions and credits attributable to

[REDACTED] under the authority of § 882(c) and Treas. Reg. § 1.882-4. (b)(5)(AC)

(b)(5)(AC)

(b)(5)(AC)

We believe that your decision to disallow the deductions and credits attributable to [REDACTED] does not preclude the assertion of either the failure to file penalty or the negligence penalty. Certainly, nothing in § 882(c) or Treas. Reg. § 1.882-4 prohibits asserting additional penalties based on the taxpayer's failure to timely file returns, nor could we find any authority supporting the position that the disallowance under § 882 is the exclusive remedy available to address such conduct. Moreover, although § 882 seems to penalize a taxpayer for not timely filing returns, it is, in fact, a disallowance provision rather than a penalty as it sets the conditions a taxpayer must meet to claim deductions and credits.¹

Regarding your second question, Treas. Reg. § 1.882-4(a)(3)(ii) provides that the District Director or the Assistant Commissioner (International) are authorized to waive the filing deadlines for purposes of applying the § 882(c) disallowance provision. While the regulation does not preclude delegating that authority to a lower level, we did not find an order delegating that authority to any other persons. (b)(5)(AC)

(b)(5)(AC)

Please give me a call at (860 290-4066) if I can be of any further assistance. This advisory is subject to our post 10-day review procedures. Consequently, you should not take any action

¹

(b)(5)(AC)

(b)(5)(AC)

(b)(5)(AC) However, as indicated in the Field Service Advice, we believe that the "good cause" requirement under Treas Reg. § 1.882-4(a)(3)(ii) is a higher standard than the "reasonable cause" standard generally applied when determining whether the taxpayer's failure to timely file returns is justified. (b)(5)(AC)

(b)(5)(AC)

(b)(5)(AC)

based on this advice until we inform you that the review process has been completed.

GERALD A. THORPE
District Counsel